

The 11th July, 1978

No. 11(112)-3Lab-78/6648.—In pursuance of the provision of section 17 of the Industrial Dispute Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak. In respect of the dispute between the workman and the management of M/s The Panipat Co-operative Distillery, Panipat.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 104 of 1976

Between

SHRI SUBASH CHANDER WORKMAN C/O. MECHANICAL AND TEXTILE MAZDOOR SANGH, PANIPAT, AND THE MANAGEMENT OF M/S. THE PANIPAT CO-OPERATIVE DISTILLARY PANIPAT,

Present :

Shri Onkar Parshad for the workman.

Shri R. S. Malik, for the management.

AWARD

By order No. ID/KNL/169-F-76/45729, date 15th December, 1976, the Governor of Haryana referred the following dispute between the management of M/s. The Panipat Co-operative Distillery, Panipat and its workman Shri Subash Chander, to this court for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :

"Whether the termination of services of Shri Subash Chander was justified and in order ? If not, to what relief is he entitled ?"

The parties put in their appearance in this Court in response to the usual notices of reference sent to them and filed their pleadings.

The workman concerned alleged,—vide claim statement, dated 5th February, 1977 filed by him

in conformity with the notice of demand, dated 9th July, 1976 served by him on the management concerned that the later initially terminated his services,—vide letter, dated 7th/9th April, 1975 and reinstated him on 25th November, 1975 after they failed to obtain approval of the Industrial Tribunal, Haryana of their order of termination of his services, dated 7th/9th April, 1975 and that they feeling highly aggrieved of the order of the Industrial Tribunal, Haryana, dismissing their application for grant of approval of the order of termination of his services adopted an unfair labour practice and transferred him from the job of attendant bottling machine to an inferior job of attendant boiler in order to victimise him and that they thereafter illegally terminated his services on false charges of absence from duty and misbehaviour. He added that the findings of the Enquiry Officer were perverse and liable to be set aside.

The management concerned pleaded,—vide written statement filed by them, that the services of the workman concerned were legally terminated by them after holding proper enquiry into the aforesaid charges and not in order to victimise him for his having contested the earlier order of termination of his services, dated 7th/9th April, 1975.

The workman concerned reiterated the allegations made by him in the claim statement and controverted the pleas of the management,—vide rejoinder filed by him with the result that the following issue in terms of the dispute as referred to this Court by the appropriate Government was framed by me,—vide order, dated 4th May, 1977 :—

"Whether the termination of services of Shri Subash Chander was justified and in order ? If not to what relief is he entitled

Whereas the management examined Shri Ram Singh, Assistant, Distillery Manager and Shri Madan Mohan Kaushal, Advocate, Chandigarh, who held the enquiry, the workman appeared as his own witness and led no other evidence. The admitted facts of the case that emerge from the evidence of the aforesaid witnesses and the records of the enquiry by the management are as under

"The Industrial Tribunal, Haryana,—vide order, dated 12th December, 1975, dismissed an application made by the

management for grant of approval of their order of dismissing the workman concerned, dated 7th/9th April, 1975 copy, Exhibit M-27.

The workman concerned was served with a charge-sheet, dated 26th December, 1975, copy, Exhibit M-7 with the allegations :

- (a) That he caused the management to charge-sheet one Shri Gian Chand, General Secretary, Sugar Mills Mazdoor Sangh for his writing a letter dated 21st November, 1975, containing insolent language and alleging false charges against the distillery Manager on the basis of information supplied to him (Shri Gian Chand) by him (workman);
- (b) That he wrote a letter, dated 17th December, 1975 to the General Manager imputing abusive language to the Distillery Manager thus constituting an Act prejudicial to the interest or reputation of the management and incompatible with healthy relationship with the management;
- (c) That he remained absent from duty during the period from 17th December 1975 to 22nd December, 1975.

That he was further served with a charge-sheet, dated 9th January, 1976, copy Ex. M-11 with the allegations of his absence from duty for more than 10 days with effect from 29th December, 1975.

The workman while admitting having written letter, dated 17th December, 1975, copy Ex. M-29 to the General Manager complaining that the Distillery Manager filthily abused him and threatened him to throw him in the boiler on 17th December, 1975 at about 12-00 a.m. if he did not leave his work, denied the charges that he remained absent from duty from 17th December, 1975 to 22nd December, 1975 and stated that the management did not assign him any duty with effect from afternoon of 17th December, 1975 despite repeated requests made by him. He, however, set up a case that the management had no right to transfer him as a boiler cooly from the bottling section and to take work from him as a boiler cooly. The Enquiry Officer gave his

findings Ex. M-16 holding the charges established against the workman. The Management on consideration of the explanation Ex. M-20 made by him in response to the show cause notice served on him, made an order dated 16th June, 1976, dismissing the workman from service."

I have gone through the whole of the correspondence exchanged between the management and the workman concerned after his reinstatement on 25th November, 1975 by the former in compliance with the order of the Industrial Tribunal Haryana copy Ex. M-27. It is admitted that the workman concerned worked as Attendant in the bottling section from 25th November, 1975, the date of his reinstatement till 17th December, 1975, when he was transferred as a boiler cooly. Whereas the management alleged that he failed to attend his duty as boiler cooly from 17th December, 1975 to 22nd December, 1975, the workman pleaded that he was always inclined to discharge his duties even as a boiler cooly during that period and that the Distillery Manager always found ways and means to keep him away from that job and did not let him work as such. The workman however admitted having declined to work as boiler cooly from 29th December, 1975 to 9th January, 1976, while being always prepared to work as attendant bottling section his original posting.

Taking the controversy between the parties regarding the presence or absence of the workman during the period from 17th December, 1975, to 22nd December, 1975, the workman had been crying hoarse,—vide letters Ex. M-3 and M-6 that he had always been prepared to attend his duties even as a boiler cooly and the Distillery Manager somehow felt reluctant to allow him to give that duty. The management made no mention of the letter Ex. M-3 of the workman in their letter Ex. M-4 and M-5 sent to the workman. I, thus in view of all the circumstances of the case rely on the statement of the workman made by him before me, that he was always prepared to attend his duties even as a boiler cooly during the period from 29th December, 1975 to 22nd December, 1975, and the Distillery Manager did not feel inclined to take work from him.

The management while admitting that they transferred him on 17th December, 1975 as a

boiler cooly from the job of a bottling attendant contended that they could do so in view of Shri Subash Chander being of the category of an unskilled workman and the two jobs of bottling attendant and a boiler cooly falling in that category. I have given this matter my careful consideration.

The argument put forth before me by the management concerned has no force inasmuch as the posts of all unskilled workmen are not always interchangeable and it will be wrong to say that a class IV employee holding the job of a peon or an orderly in the category of unskilled workmen can be transferred as a Sweeper and can be asked to clean the lavatory provided by the management for use by their employees. The proposition thus put forth by the management that they could well transfer Shri Subash Chander as a boiler cooly from the job of a bottling attendant after his reinstatement on 25th November, 1975, is wholly untenable and merits no consideration. His transfer from the job of a bottling attendant to that of boiler cooly was illegal and his refusal to work as a boiler cooly during the period from 17th December, 1975 to 9th January, 1976 was fully justified. It is not denied by the management that he was ever ready and prepared to work as a bottling attendant during that period.

I, am thus convinced that the management transferred the workman as a boiler cooly in order to victimise him as a result of his contesting the order of dismissal from service, dated 7th/9th April, 1975 and the dismissal of their application made by them for grant of approval of such an order.

In view of the admitted facts and circumstances of the case, and the findings made by me, I have further no hesitation in holding that the Enquiry Officer went wrong in relying on the statement of Shri Ram Sarup the then Distillery Manager and Shri Krishan Dutt the then boiler attendant, that the averments made by the workman in the letter dated 17th December, 1975, copy Ex. M-3 were incorrect and disbelieving the workman who affirmed these averments. The fact that the management failed to initiate an enquiry into the allegations made by the workman against Shri Ram Sarup lends support to the allegation of the former that they were biased against him and intentionally suppressed his

allegations about the Distillery Manager having filthily abused and threatened to throw him in the boiler. The management did not press the charges of the workman having caused the management to chargesheet Shri Gian Chand and the findings made by the Enquiry Officer holding even this charge established is manifestly liable to be set aside. I have considered myself entitled to differ from the findings of fact made by the Enquiry Officer under the judicial discretion vesting in me under section 11-A of the Industrial Disputes Act as duly interpreted by the Hon'ble the Supreme Court,—vide 1973, I LLJ 278 between the workmen of M/s. Firestone Tyre and Rubber Co. of India Ltd. and the management and others.

Coming now to the legal aspect of the matter the management concerned have admittedly no Certified Standing Orders of their own and as such the Model Standing Orders of the Government of the State of Haryana apply to the parties. The averments admittedly made by the workman concerned,—vide letter, dated 17th December, 1975, Ex. M-29, that the Distillery Manager filthily abused him and threatened him to throw him in the boiler, do not constitute a misconduct under the definition of this term as given in order 20 of the Model Standing Orders and as such even assuming that these averments were made by the workman falsely, the same did not justify his dismissal from service under Model Standing Orders.

Coming now to the discussion of the only other charge, I have already found that he was ever willing and ready and prepared to join duties as an attendant in the bottling section and his refusal to work as a boiler attendant during the period from 29th December, 1975 to 9th January, 1976, on the plea that the management had no right to transfer him to an inferior job, did not amount to wilful absence from duty for more than 10 days, in the circumstances of the case. I, am further convinced that the findings of the Enquiry Officer made against the workman concerned on the basis of the statements of the employees of the management, who had an animus against him as a result of the dismissal of an application of the management for approval of the order of his dismissal from service, dated 7th/9th April, 1975, by the Industrial Tribunal Haryana and his reinstatement on duty with effect from 25th November, 1975, are erroneous and

liable to be set aside. The charges framed against the workman were in fact a pretext and a device adopted by the management to weed him out of service and render the order of the Industrial Tribunal Haryana dismissing their application copy Ex. M-27 unfructuous.

The result is that the termination of services of Shri Subhash Chander workman concerned by the management were unjustified and not in order and he is entitled to be reinstated with continuity of service and full back wages. I, hold accordingly and decide the issue against the management and answer the reference and return the award in terms of my findings.

Dated the 23rd June, 1978.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1723, dated the 1st July, 1978.

Forwarded, (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act.

Dated the 23rd June, 1978.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 11(112)-3Lab.-78/6731.—In pursuance of the provision of section 17 of the Industrial Dispute Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Faridabad. In respect of the dispute between the workmen and the management of M/s. Faridabad Manufacturing, (Engineering Prod.) Pvt. Ltd, Plot No. 68, Sector 6, Faridabad.

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

Reference No. 213 of 1977.

Between

THE WORKMAN AND THE MANAGEMENT OF M/S FARIDABAD MFG. (ENGG. PROD), PRIVATE LIMITED, PLOT NO. 68, SECTOR-6, FARIDABAD.

Present:—

Shri Onkar Parshad, for the workman.

Nemo, for the management.

AWARD

By order No. ID/FD/1058-B-76/34054, dated 16th September, 1976, the Governor of Haryana, referred the following dispute between the management of M/s Faridabad Mfg. (Engg. Prod.) Private Limited, Plot No. 68, Sector-6, Faridabad and its workmen, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the workmen are entitled to the bonus at a higher rate than 4 per cent for the year 1974-75 ? If so, with what details ?

On receipt of the order of reference, notices were sent to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, the following issue was framed on 28th June, 1977.—

(1) Whether a substantial number of workmen have espoused the demand (OPW) (Onus objected to on the ground that after reference, the *prima facie* presumption of espousal is in favour of the workman and therefore, its onus should have been on the management).

The case was fixed for the evidence of the workmen. The workmen examined himself as W.W. 1 and closed his case. Then the case was fixed for the evidence of the management. At this stage the representative for the management made a statement that he had no instructions from the management to appear in this reference, thereafter, and the factory had been closed. He did not appear thereafter and ex parte proceedings were ordered against the management. The workman proved Ex. W-1 the demand notice and

stated that all the workmen of this factory numbering 23 were members of a union and they were present at the meeting and they decided to raise the demand and authorised their representatives to raise the demand. I, decide issue No. 1 in favour of the workmen.

The representative for the workmen then examined Shri Ram Pat as W.W. 1 on merit. He stated that the management was earning profits for the last three years. In the year 1973-74, the production amounted to Rs. 70,000 and in 1974-75, it was about two lakh. For the year 1973-74, the management had paid bonus at the rate of 12 per cent and they are entitled to bonus for the year 1974-75 at the rate of 20 per cent. W.W. 2, Shri Nanak Ram, the workmen also corroborated W.W. 1. The workmen then closed their case. Prior to the representative for the management withdrew himself from this case, the management had filed copies of balance sheet as at 30th June, 1975 and profit and loss account also for the year ending 30th June, 1975. The copies of balance sheet and profit and loss account were not proved. They were simply typed written copies. It is not proved that these are the true copies of the balance sheet and profit and loss account but the evidence of the workmen is all oral. They have produced no documents, neither they summoned any documents from the management to prove their demand. I can not rely on the oral evidence of the workmen.

The management had declared bonus at the rate of 4 per cent for the year 1974-75, hence the reference is whether the workmen are entitled to bonus at higher rate than 4 per cent for this year. In absence of reliable evidence, I am not in a position to hold that the workmen are entitled to bonus at the higher rate than 4 per cent for the year 1974-75. I, therefore, answer the reference and give my award that the workmen are not entitled to bonus at the rate higher than 4 per cent for the year 1974-75.

NATHU RAM SHARMA,
Dated the 2nd July, 1978. Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 543, dated the 5th July, 1978.

Forwarded, (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

NATHU RAM SHARMA,
Dated the 5th July, 1978. Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

G. V. GUPTA, Secy.

EXCISE AND TAXATION DEPARTMENT

CORRIGENDUM

The 21st July, 1978

No. 3101-ET(2)-78/20431.—In the Excise and Taxation Department Notification No. 1985-ET(i)-78/10951, dated the 17th April, 1978, published in Haryana Government Gazette dated the 25th April, 1978, the following corrections are hereby made :—

1. In Col. 2 against serial No. 7 for the word "Karan" read the word "Karam".
2. In Col. 4 against serial No. 24, the word "Fail" is deleted.
3. In col. 3 against serial No. 39 read the word "Pass" in place of word "Fail" and in Col. 5 read the word "Fail" in place of the word "Pass".
4. In Col. 2 against serial No. 44 read "A. N. Kurmi" instead of "A.N. Knmmi".
5. In Col. 6 against serial No. 46 read the words "(Pass W.C.)" for the word "Pass" and in Col. 7 read the word "Fail" instead of the word "Pass (W.C.)".
6. In Col. 3 against serial No. 61, the word "Pass" is deleted.
7. In Col. 1 against serial No. 71 read the word "Raghova" instead of the word "Roghovo".

(Sd.) . . .

Deputy Secretary, Excise and Taxation,
for Commissioner and Secretary to Government, Haryana,
Excise and Taxation Department.